Supreme Court, U.S.
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No. 96-1528

IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

DANIEL R. LOVING,

Petitioner,

vs.

PIRELLI CABLE CORPORATION, PENSION PLAN FOR SALARIED EMPLOYEES OF PIRELLI CABLE CORPORATION, AND PIRELLI CABLE CORPORATION, PLAN ADMINISTRATOR OF SALARIED PENSION PLAN,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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COUNTERSTATEMENT OF QUESTION PRESENTED

1. Whether the Judgment Order of the Third Circuit Court of Appeals should be affirmed on the grounds that a claim for denial of pension benefits under the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S. C. Section 1001 et seq. accrues when a participant learns that he will not receive a benefit to which he believes he is entitled or, in the alternative, when a claim for benefits under the pension plan is first formally denied.

2. Whether the Judgment Order of the Third Circuit should be affirmed on the alternative grounds that the Petitioner's ERISA pension benefit claims were barred by the Delaware one year statute of limitations set forth in Delaware Code Annotated, title 10, Section 8115 (1975), rather than the three-year limitations period set forth in Delaware Code Annotated, title 10, Section 8106 (1975).

3. Whether the Judgment Order of the Third Circuit should be affirmed on the alternative grounds that: (i) Petitioner's pension benefit was properly calculated under the applicable provisions of the Pension Plan for Salaried Employees of Pirelli Cable Corporation; and (ii) Petitioner was properly denied participation in the 1987 early retirement incentive program.

PARENT COMPANIES AND NON-WHOLLY OWNED SUBSIDIARIES

Pirelli S.P.A.

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PRELIMINARY STATEMENT

Petitioner Daniel R. Loving seeks a writ of certiorari with respect to a Judgment Order of the Third Circuit Court of Appeals based on his speculation as to the implications of that decision and its potential conflict with decisions recognizing a duty to exhaust ERISA employee benefit plan remedies. Petition at 3-4. As explained below, there is no such conflict and the decisions cited by Loving are entirely consistent with the conclusion of the District Court — which Loving assumes is the basis of the Third Circuit's affirmance — that Loving had not diligently pursued his benefits claims and that his claims were therefore barred by the statute of limitations.

Indeed, the position implicitly advocated by Loving in his Petition, i.e., that the federal discovery rule (which holds that a statute of limitations period begins to run upon the discovery of an injury) should not apply to his ERISA benefits claim, is contrary to the decisions of numerous Circuit Courts. As explained below, the Circuit Courts have routinely applied the discovery rule in ERISA benefits claim cases and have held, as a result, that such claims accrue when a participant learns that he will not receive a benefit to which he believes he is entitled or when a claim for benefits is first denied. Loving has not cited any Circuit Court decision to the contrary. Thus, adoption of Loving's position would have in fact created an inconsistency with decisions of other Circuit Courts.

As the Circuit Court decisions implicitly recognize, ERISA plan participants are not prejudiced by application of the discovery rule so long as he or she is diligent in invoking the

available plan remedies within the applicable statute of limitations period. Loving's claim was dismissed by the District Court precisely because he was not diligent and waited until after the limitations period had expired before exhausting plan remedies.[1]

There are at least three alternate bases on which the Third Circuit could have affirmed the District Court's decision, i.e., (i) that the statute of limitations on Loving's ERISA benefits claim began to run when he first learned that he would not receive a benefit to which he believed he was entitled or when his claim for benefits was first denied; (ii) that Loving's benefits claim is governed by a one year statute of limitations rather than a three year limitations period; or (iii) that Loving's benefit entitlement was correctly determined by the Pirelli Pension Plan for Salaried Employees. The possibility that any of these alternate bases could have been the basis for Third Circuit's affirmance of the decision of the District Court, and the possibility that the Supreme Court could also affirm on any one of these bases, is yet another compelling reason why a writ or certiorari should be denied. See Sanson Hosiery Mills v. NLRB, 344 U.S. 863 (1952); The Arlington, Inc. v. Mayer, 339 U.S. 965 (1950).

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[1] The Judgment Order of the Third Circuit notes that the court had considered all of the arguments raised by Loving in his appeal, the Order does not specify on what particular basis the court affirmed the District Court dismissal of Complaint. The decision of the District Court is set forth in the transcript of the oral argument on Respondents' Motion for Summary Judgment.

BRIEF STATEMENT OF THE CASE

Loving is a former employee of Pirelli Cable Corporation ("Pirelli") who was discharged in 1987. He challenges the calculation of his pension benefits under the terms of a pension plan that was terminated in 1989. Loving specifically challenges (1) the method by which his pension benefit was calculated under the Pension Plan for Salaried Employees of Pirelli Cable Corporation (the "Salaried Plan") when his employment with Pirelli was terminated in the fall of 1987; (2) the determination, also made in the fall of 1987, that he did not qualify for an early retirement incentive program offered at that time; and (3) the alleged denial in the fall of 1987 of his oral request for information from the Salaried Plan. Loving's claim for benefits was brought pursuant ERISA § 502(a)(1)(B), and his claim for denial of information was brought under ERISA § 502(c).[2]

Notwithstanding the fact that all of the events that form the basis of his claims occurred in 1987, Loving nonetheless waited until April 1994 -- more than six years -- before commencing this action. During the intervening six-year period, there were numerous occasions when Loving again was put on notice that he may have had a legal claim to pursue in connection with his pension benefits.

For instance, in January 1988, Loving was informed of the precise amount of his pension benefit entitlement. In May

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[2] Loving's Petition does not object to the lower courts' decision with respect to his Section 502(c) claim.

1989, after the Salaried Plan was terminated and its assets were distributed, Loving was informed again of the precise amount of the annuity purchased for his benefit in connection with the Salaried Plan termination in order to provide for his pension benefit. Nevertheless, although he knew by these notices that he was not going to receive the amount he now claims, Loving did not commence this action for almost another five years.

Eventually, on October 31, 1990, Loving, through his attorney, submitted a formal claim for additional pension credit and for participation in the 1987 early retirement incentive program. The Salaried Plan formally denied this claim on January 3, 1991. Even then, Loving waited more than three years before commencing this action on April 20, 1994.

By oral decision on March 28, 1995, the District Court granted summary judgment to Pirelli, dismissing all of Loving's claims as a matter of law. The District Court determined that Loving's ERISA Section 502(a)(1)(B) claim accrued either on January 18, 1988, when he was first notified of his pension entitlement, or, at the latest, on January 3, 1991, when his claims were formally denied by the Salaried Plan. The lower court rejected Loving's contention that the running of the statute of limitations should not be deemed to commence until after a claimant exhausts all available administrative remedies, finding that there is no case authority to support such an argument. In considering the date of accrual, the court expressed concern that to hold a cause of action in abeyance until a plaintiff elected to pursue an administrative appeal -- which would effectively permit claims to remain open-ended for an indefinite span of time -- would render any underlying statute of limitations period meaningless. Accordingly, the

District Court held that Loving's benefit claims accrued more than three years before his action was commenced.

In determining the accrual date of Loving's claims to be no later than January 3, 1991, the District Court applied the three-year limitations period contained in Delaware Code Annotated, title 10, Section 8106 (1975), and found that all of Loving's claims under ERISA Section 502(a)(1)(B) were time-barred. The District Court found it unnecessary to decide whether Loving's claims would be barred by Delaware's one-year limitations period applicable to wage and benefit claims.

On August 21, 1996, the Third Circuit Court of Appeals affirmed the decision of the District Court. The Third Circuit's Judgment Order notes that it carefully reviewed the record and considered all of Loving's contentions, including Loving's arguments that (1) Loving's ERISA § 503 cause of action did not accrue until after the plan administrator had given notice denying an appeal from the decision denying benefits; (2) a three-year statute of limitations applied to Loving's claim; (3) Pirelli's failure to provide requested plan information constituted a breach of fiduciary duty; (4) Loving's request for plan information was not subject to separate statute of limitations where the request is pursuant to ERISA § 502; and (5) Loving is eligible for requested pension benefits. After considering these arguments, the Third Circuit affirmed the decision of the District Court without stating any specific grounds. The Third Circuit subsequently denied rehearing en banc.

ARGUMENT

I. There Are Multiple Grounds On Which To Affirm The Decision Of The Third Circuit

The Third Circuit's decision is sustainable on several different grounds, only one of which is even alleged to create a conflict among the Circuits. Indeed, the Third Circuit's rejection of any one of Loving's arguments on appeal to that court would have permitted the Third Circuit to affirm the District Court's decision. In particular, Loving's appeal could not succeed upon a finding (i) that the federal discovery rule applied to his claim for benefits and his claim therefore accrued either when he first learned of his alleged injury or when his claim was first denied; (ii) that a one year statute of limitations applied to his claim for benefits; or (iii) that he was not entitled to the benefits he claimed under the Salaried Plan.

Because the Third Circuit did not specify the basis on which it affirmed the decision of the District Court, the Supreme Court could affirm on any of the grounds listed above. As explained above, the possibility of the Supreme Court could affirm on grounds with respect to which certiorari is not sought is a compelling reason to deny a writ of certiorari.

II. Petitioner Has Not Identified Any Conflict Among The Circuit Courts Of Appeal Created By The Third Circuit's Decision In This Case

Even assuming, as Loving does, that the Third Circuit affirmed based on the District Court's holding that the statute of limitations on his benefits claim was governed by the federal discovery rule and was therefore not timely because he had long ago discovered the facts upon which he based this claim, i.e., that he would not receive a benefit to which he believed he was entitled a writ of certiorari is not warranted because such a holding would be entirely consistent with well established case law.

III. Application Of The Federal Discovery Rule To Loving's ERISA Benefits Claim Was Not Contrary To Any Decision Of This Court And Does Not Create A Conflict Among The Circuit Courts

The decision of the District Court that the federal discovery rule applies to an ERISA claim for benefits, and that discovery occurs when a participant learns that he will not receive a benefit to which he believes he is entitled or when a claim for benefits is first denied, is well supported by numerous Circuit Court decisions. See, e.g., Tanzillo v. Local Union 617 Int'l Bhd. of Teamsters, 769 F.2d 140, 144 (3d Cir. 1985) (claim accrues at the grant or denial of pension benefits); Miles v. New York Teamsters Conference, 698 F.2d 593, 598 (2d Cir.) (claim accrues when repudiation of claim is made known

to the beneficiary), cert. denied, 464 U.S. 829 (1983); Price v. Provident Life & Accident Ins. Co., 2 F.3d 986, 988 (9th Cir. 1993) (claim accrues when participant learns of denial of benefits); Jenkins v. Local 705, Int'l Bhd. of Teamsters Pension Plan, 713 F.2d 247, 253-54 (7th Cir. 1983) (benefits claim accrues at initial denial of plaintiff's pension application).

Applying the discovery rule to this case, the District Court correctly concluded that Loving's claims accrued either when he was first notified of his pension entitlement in January 1988, or, at the latest, when his claim was formally denied by the Salaried Plan in January 1991. In either case, and even assuming a three year statute of limitation as Loving contends, his ERISA claims are barred because he did not commence this action until April 1994.

Loving does not identify any decision of this Court, or any Circuit Court, that is inconsistent with the decision of the District Court in this case or contrary to the authority cited above. Rather, Loving's primary argument as to why a writ of certiorari is warranted is that because the Third Circuit's decision -- assuming the District Court's application of the discovery rule was the basis for the affirmance -- is contrary to established authority requiring an ERISA plan participant to exhaust internal plan administrative remedies in order to maintain an ERISA benefits claim in court. Loving cites a number of Circuit Court cases that stand for the general proposition that ERISA plan participants must exhaust administrative remedies before commencing a lawsuit. See Petition at 1-10. Yet neither the District Court nor the Third Circuit held, or even suggested, that ERISA plan participants were not required to exhaust their administrative remedies.

Indeed, Loving argued before both the District Court and the Third Circuit that the ERISA exhaustion requirement compelled a finding that his ERISA benefits claim did not accrue until he finally exhausted his plan remedies in April 1991. This argument was properly rejected by both courts.

Logically, there is nothing inconsistent with the ERISA exhaustion requirement and application of the discovery accrual rule. Both rules serve separate important public policies. The discovery accrual rule prevents the assertion of stale claims. The exhaustion requirement promotes "fully considered actions by pension plan trustees to assist courts if the dispute is eventually litigated." Mason v. Continental Group, Inc., 763 F.2d 1219, 1227 (11th Cir. 1985), cert. denied, 474 U.S. 1087 (1986). There is simply no reason -- and Loving does not suggest one -- why a participant could not exhaust his plan administrative remedies and also commence an action within the limitations period for an ERISA benefits claim.[3] In Loving's particular case, there is no explanation in the record why he waited more than six years before bringing his claim for benefits (and five years after the Salaried Plan was terminated).

Moreover, Loving's Petition does not address the problems that would arise if the accrual date for a claim under ERISA Section 502 were triggered only upon a plaintiff's final exhaustion of administrative remedies. Such a rule, as the District Court observed, could extend indefinitely the time when

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[3] As discussed below, the time limitations for deciding claims and appeals effectively prevent the statute of limitations from running while a participant exhausts his administrative remedies.

a federal action could be commenced, and would place the timing of a claim wholly within the control of a claimant. Loving ignores this significant policy issue in his Petition.

It is wholly illogical to allow the date of accrual for a federal cause of action under ERISA Section 502(a)(1)(B) to be determined by the whim of the claimant's decision as to when to initiate an administrative claims procedure. Indeed, neither the ERISA statute itself nor the regulations promulgated by the Department of Labor mandate a particular time period in which a party must begin the administrative remedies process.[4/] Thus, as Loving did, a party could sit back and wait for years before filing a claim with the plan administrator challenging pension benefits determinations.

Loving's accrual argument is also unsound because it fails to account for the many instances when the exhaustion of administrative remedies requirement is waived by the courts on the grounds that any administrative appeal would be futile. For instance, employees are not required to exhaust administrative remedies when an employer previously has denied all similar applications for benefits, Berger v. Edgewater Steel Co., 911 F.2d 911, 916 (3d Cir. 1990), cert. denied, 499 U.S. 920 (1991), where plaintiffs demonstrate that there are no factual disputes to be resolved on appeal, Fulk v. Hartford Life

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[4] Furthermore, there is no requirement in the statute or in the regulations that plans limit the time period in which a claim may be filed by a plan participant. In fact, the only prescribed time periods with respect to a plan's administrative claims procedure are requirements specifying when a plan administrator must respond to the participants. See DOL Reg. § 2560.503-1; 29 C.F.R. § 2560.503-1 (1997).

Ins. Co., 839 F. Supp. 1181, 1186 (M.D.N.C. 1993), or when a plan has been terminated and the assets have been dispersed. Hutchinson v. Wickes Cos., 726 F. Supp. 1315, 1321 (N.D. Ga. 1989). Based on the foregoing authority, Loving could probably have argued successfully that he was not, in the circumstances of this case, required to exhaust. Pirelli has interpreted the Salaried Plan provisions at issue in the same consistent manner, and the Salaried Plan was terminated in 1989. This issue is also not addressed in Loving's Petition. Nor does he explain why a participant is not fully protected by filing a suit and seeking a stay to allow completion of the administrative process.

Thus, Loving's position would wholly eviscerate the important public policies that are advanced by legislating definite and reasonable statutes of limitations.

IV. Application Of The Discovery Rule To Loving's ERISA Benefits Claims Is Not Contrary To Public Policy

Loving also argues that the decision of the Third Circuit is contrary to public policy because it will force a participant to commence an action for benefits prior to exhaustion of his administrative remedies. Petition at 11-13. Loving raises the specter of a "manipulative plan administrator" who fails to respond to an initial claim for benefits, or delays responding to an appeal, and argues that a participant will be forced to retain an attorney to deal with this quandary. Id. at 12-13.

Loving's argument should be rejected for at least three reasons. First, this case unquestionably did not involve a "manipulative plan administrator" delaying a response to either an initial claim for benefits or an appeal. Loving's attorney filed a claim for benefits on behalf of Loving on October 31, 1990. The Salaried Plan denied the claim (with a detailed explanation) two months later on January 3, 1991. Loving filed an appeal on March 1, 1991, which was denied on April 22, 1991. Thus, the Court is simply not required in this case to address the situation of unreasonable delay in responding to a participant's claim for benefits or a subsequent appeal.

Second, as Loving acknowledges, ERISA provides strict time limits for a plan administrator to respond to a claim for benefits. Petition at 5-10. Department of Labor regulations require a plan administrator to respond to a claim filed by a participant within 90 days and rule on any appeal therefrom within 60 days, subject to certain exceptions. See DOL Reg. § 2560.503-1; 29 C.F.R. § 2560.503-1 (1997). If the administrator fails to respond to a claim in a timely manner, the claim will be "deemed denied." DOL Reg. § 2560.503-1(e)(3) (1997). Thus, although not relevant in this case because the Salaried Plan administrator complied with the time limitations set forth in the Department of Labor regulations, those regulations prevent a "manipulative plan administrator" from unreasonably delaying a decision on a claim or appeal.

Third, although Loving speculates that a participant will be prejudiced by not having an attorney assist in the initial administrative claim and appeal procedures, Loving in fact had an attorney assisting him in each of these phases of his exhaustion efforts. Indeed, as early as September 1990, Loving

had retained an attorney to assist him in making a claim for benefits from the Salaried Plan. In any event, because Department of Labor regulations require prompt responses to claims for benefits and appeals of denied claims, a participant has sufficient time to retain an attorney after the appeal to determine whether to commence litigation. Indeed, the entire claim and appeal process serves to narrow the issues and should facilitate a determination, with the assistance of counsel, as to whether litigation is warranted.

Finally, Loving's public policy arguments ignore the important public policy considerations, discussed above, that compel application of the discovery rule to ERISA benefits claims, i.e., that the date of accrual for a federal cause of action under ERISA Section 502(a)(1)(B) should not be determined by the whim of when a claimant decides to initiate an administrative claims procedure. The District Court correctly found that these public policy considerations required application of the discovery rule to Loving's benefits claims and that Loving discovered his alleged injury more than three years before he commenced this action. Thus, assuming that the Third Circuit affirmed on this bases, its decision was not only entirely consistent with the decision of other Circuit Courts, but was also not contrary to public policy.

V. The Third Circuit's Decision Can Also Be Affirmed Based On A Finding That Loving's Claim For Benefits Is Governed By A One Year Statute Of Limitations

Loving argues that the Third Circuit's decision "accepts the suggestion" of the District Court that "a benefits claim would apply a non-contract period of statute of limitations." Petition at 11. According to Loving, this conclusion is contrary to this Court's decisions in Kemmerer v. ICI Americas, Inc., 70 F.3d 281, 287-88 (3d Cir. 1995), cert. denied, 116 S. Ct. 1826 (1996) and Senior Executive Benefits Plan Participants v. New Valley Corp., 89 F.3d 143, 149-50 (3d Cir. 1996), cert. denied, 117 S. Ct. 947 (1997).

Although Loving does not explicitly make the argument in his Petition, and the District Court never reached the issue, Loving's Petition reasserting the argument he made before the District Court and the Third Circuit that Delaware's three year statute of limitations applicable to contract actions should apply to his benefits claim rather than Delaware's one year statute of limitations applicable to wage and benefits claims.[5] Although the Third Circuit did not expressly reject Loving's argument that a three year statute of limitation applied to his benefits claim (and the District Court never reached the issue), as discussed below, a one year statute of limitations

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[5] Federal courts borrow the forum state's statute of limitations applicable to the most analogous state law claim to determine the appropriate statute of limitations period. Vernau v. Vic's Mkt., Inc., 896 F.2d 43, 45 (3d Cir. 1990).

should bar Loving's benefits claim even if it did not accrue until after he completed his long-delayed efforts to exhaust.

In Delaware, any claim for work or labor already performed, or "for any other benefits arising from such work," is expressly governed by Delaware Code Annotated, title 10, Section 8111 (1975), which provides for a one-year statute of limitations. Delaware courts have uniformly applied this limitations period to claims for all types of employment benefits -- including retirement benefits -- arising from work already performed. See, e.g., Vinson v. University of Delaware, No. 430, 1989, 1990 Del. LEXIS 152, at *1 (Del. Apr. 18, 1990) (applying Section 8110 (now § 8111) to claim to recalculate and increase compensation under a pension plan); Turner v. Diamond Shamrock Chems. Co., No. C.A. 85C-DE-130, 1987 WL 17175, at *2 (Del. Sept. 14, 1987) (applying Section 8111 to claim for severance brought under ERISA); Mitchell v. E.I. Du Pont de Nemours & Co., 310 A.2d 641, 642 (Del. 1973) (applying Section 8110 (now §8111) to claim for disability benefits). See also Sorensen v. Overland Corp., 142 F. Supp. 354, 360 (D. Del. 1956) ("The one year statute has a comprehensive sweep [and] was intended to bar all claims arising out of the employer-employee relationship." "The word 'benefits' is embracing and covers all advantages growing out of the employment."), aff'd, 242 F.2d 70 (3d Cir. 1957).

There is no dispute that Loving's claim under ERISA are for pension benefits arising out of work he already performed. Thus, Loving's claims must necessarily be governed by Delaware's one-year limitation period.

In an analogous case, the Eighth Circuit, in Adamson v. Armco, Inc., applied a wage claim statute of limitations to an ERISA benefits claim rather than a longer contract statute of limitations. 44 F.3d 650, 651-52 (8th Cir.), cert. denied, 116 S. Ct. 85 (1995). Applying precisely the same rationale urged here by Pirelli, the Eighth Circuit held that the more analogous two-year wage claims statute of limitations should apply. Id.

Neither of the two decisions relied on by Loving address the statute of limitations applicable to an ERISA benefits claim. In Kemmerer, the court applied breach of contract principles to determine whether the terms of a plan were breached. 70 F.3d at 287-88. In Senior Executive Benefits Plan Participants, the court ruled that extrinsic evidence should be permitted to interpret a "top hat" employee benefits plan. 89 F.3d at 149-50. Obviously, the decision of the Third Circuit in this case is not contrary to either of these decision.

CONCLUSION

Based on the foregoing, the Court should deny the Petition for Writ of Certiorari.

Respectfully submitted,
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